

1 from the cross-examination that Mr. Dunn had talked
2 about this one foot of space that had been lost from
3 the power space.

4 So I am following up on the cross-
5 examination, and I have to. I wish we had heard more
6 about real poles in cross-examination. We didn't.
7 But I'm going to take us there in redirect.

8 MR. SEIVER: Your Honor, that's going way
9 beyond the scope. I didn't ask him about a particular
10 pole, and he didn't testify in here that he looked at
11 the poles and was making any conclusion of the poles.

12 JUDGE SIPPEL: That's right. What you're
13 trying to do is you're trying to go back and recast
14 your whole direct testimony with new evidence that
15 wasn't uncovered on cross-examination.

16 MR. CAMPBELL: Your Honor, he specifically
17 questioned him about the ILECs. He put up my
18 demonstrative aid, and asked him about the spacing on
19 the demonstrative aid. That's what I'm attempting to
20 clarify, what that spacing is.

21 JUDGE SIPPEL: Well, not with other
22 evidence. Not with evidence that wasn't in direct,

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1 and wasn't introduced on cross.

2 MR. CAMPBELL: Your Honor, this evidence is
3 in direct.

4 JUDGE SIPPEL: This evidence is
5 demonstrative evidence. Is this the same pole that we
6 had up before?

7 MR. CAMPBELL: It is the diagnostic
8 diagrams that we talked about in the document at
9 issue.

10 JUDGE SIPPEL: So this hasn't been up
11 before on the screen?

12 MR. CAMPBELL: It has not been up before,
13 no sir. But I'm happy to move on.

14 JUDGE SIPPEL: Yeah, well you move on, but
15 I want you to move on just with respect to the cross-
16 examination, not coming in with new evidence that
17 hasn't been covered already.

18 MR. CAMPBELL: I think I wrote down the
19 exact question, and so I'll follow up that way, Mr.
20 Dunn.

21 BY MR. CAMPBELL:

22 Q You were asked about the typical joint use

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1 pole, correct?

2 A Yes.

3 Q And a typical joint use pole is what size?

4 A 40-foot class 5.

5 Q And where did the phrase, typical joint-
6 use pole, originate?

7 A Through our contracts with ILEC companies.

8 Q And following up on that question you were
9 asked this: Are all of Gulf Power's poles crowded or
10 at full capacity? And your answer was: A large
11 capacity are at full capacity.

12 Do you recall that question and answer?

13 A That's correct.

14 Q Were you including in that high percentage
15 of poles that you concluded were at full capacity
16 poles that would have to be changed out in order to
17 accommodate an additional attachment?

18 A Yes.

19 Q Were you including in your answer there
20 concerning the percentage of poles that are already at
21 full capacity poles that would have to be rearranged
22 or have some other form of make-ready performed in

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1 order to accommodate an additional attachment?

2 A Yes.

3 Q Now in Mr. Seiver's cross this morning,
4 and I wrote it down, I think -

5 JUDGE SIPPEL: Those are probably leading
6 questions, but they are very consistent with what
7 you've already put forward in your trial brief. So
8 I'm not leaning anything new here.

9 I'm not sure what you're trying to do with
10 this.

11 MR. CAMPBELL: If you'll give me leeway for
12 one more question, I think you'll see it, Your Honor.

13 In Mr. Seiver's cross, I think you said at
14 one point that if a pole could be rearranged, that it
15 was not crowded; did I hear you correctly?

16 THE WITNESS: If a pole requires make-ready
17 it is crowded.

18 BY MR. CAMPBELL:

19 Q And what do you mean by the term, make-
20 ready?

21 A It's any rearrangement or replacement.

22 Q You were asked some questions about the

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1 complainants negotiating a rate, and the contracts
2 that were terminated in the year 2000 that were higher
3 than the statutory cable rates. Do you recall that
4 line of questioning?

5 A Yes.

6 Q Tell me how that came about?

7 A Are you talking about the inclusion of the
8 neutral and the lightning arrester as being a portion
9 of the rate?

10 Q I'm asking you more broadly. Describe the
11 negotiations that led to the complainants agreeing to
12 pay a rate that exceeded the statutory cable rate.

13 MR. SEIVER: Your Honor, I object to that.

14 JUDGE SIPPEL: It's been asked and
15 answered. There is nothing further to bring out.

16 MR. CAMPBELL: Your Honor, this is not
17 asked and answered. They alluded to it.

18 JUDGE SIPPEL: I mean I can recall the
19 testimony two or three different times about that, and
20 also it was in opening statement.

21 MR. CAMPBELL: It was in the opening
22 statement, the negotiations he testified to on cross-

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1 examination concerned the ILEC contracts with GTC,
2 Spring and Bell South. He was not asked about the
3 negotiations between the complainants concerning
4 their agreement to pay more than the statutory cable
5 rate.

6 JUDGE SIPPEL: Well, I certainly remember
7 him being asked on the subject.

8 Now, whether it was as defined as you're
9 talking about, I'm not so sure.

10 Let's ask Mr. Seiver, what is your
11 position on this?

12 MR. SEIVER: Well, Your Honor, it's exactly
13 what we talked about, that it was understood that the
14 \$6 was more than the \$4.61; he knew that, and he
15 talked about it. He said it was in the give-and-take
16 of negotiations.

17 And like he said, make-ready wasn't
18 crowded. And now he's led him into saying make-ready
19 is crowded.

20 JUDGE SIPPEL: I'm not going to permit that
21 line of questioning on redirect. The witness has been
22 asked and answered that question sufficiently, and I

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1 don't think there is anything more to add to the
2 record by having him go into some detail about some
3 negotiation.

4 I don't understand.

5 MR. CAMPBELL: I'll try to strip away the
6 detail and get to the point, then, Your Honor.

7 BY MR. CAMPBELL:

8 Q There was an allusion in the opening
9 statement of this case that there was duress in the
10 negotiations between you and the complainants. Was
11 there, Mr. Dunn?

12 MR. SEIVER: Objection, Your Honor.

13 JUDGE SIPPEL: I'll permit that.

14 THE WITNESS: Absolutely not. We sat down
15 and talked about the things of value, and those were
16 agreed to. There was never an instance where a
17 contract was withheld or lengthened. It was strictly
18 negotiations.

19 There was an allusion on that same subject
20 that the utility had essential facilities in that
21 negotiation. Was that discussed in that negotiation?

22 MR. SEIVER: Objection.

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1 JUDGE SIPPEL: I'm going to sustain the
2 objection. You made your point.

3 BY MR. CAMPBELL:

4 Q Do utilities have essential facilities for
5 the purposes of delivering a cable service to their
6 cable customers?

7 MR. SEIVER: Objection, Your Honor. It's
8 calling for a legal conclusion. It has nothing to do
9 with his testimony. And he would not be, as a legal
10 analyst, to take a conclusion of law based on his
11 testimony. It's a term that's argued about in cases.

12 MR. CAMPBELL: I will say that if this same
13 rule of law applies to their witnesses, I will
14 withdraw the question.

15 JUDGE SIPPEL: I want to be very careful
16 here, Mr. Seiver. You know what is good for the goose
17 is good for the gander; I think that's what it means.

18 I don't want to restrict these witnesses.
19 On the other hand I don't want this thing to get
20 carried away either. This is not an expert witness;
21 this is a fact witness. So I don't know how much he's
22 expected to know of the particular line that you are

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1 on right now.

2 But I will hold you to this, Mr. Campbell,
3 that in terms of their testimony on these subjects,
4 when they put their people on, I'm going to give them
5 as broad an approach as I'm giving you on this.

6 MR. CAMPBELL: I appreciate that, Your
7 Honor.

8 Let me rephrase the question, and direct
9 it again to the negotiations.

10 JUDGE SIPPEL: Wait a minute, don't we have
11 an outstanding question. What was the outstanding
12 question?

13 MR. CAMPBELL: I withdrew the question.

14 JUDGE SIPPEL: You withdrew it?

15 MR. CAMPBELL: Yes, sir.

16 BY MR. CAMPBELL:

17 Q You were in the courtroom this morning
18 when the opening statement was delivered, correct, Mr.
19 Dunn?

20 A Yes.

21 Q Did you hear Mr. Cook's descriptions of
22 the negotiations between you and the complainants

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1 concerning that rate that exceeds the statutory cable
2 rate?

3 A Yes.

4 Q Did you feel in that negotiation that you
5 were negotiating over utility property that was
6 essential to the delivery of cable services to their
7 customers? That's not a legal conclusion. Did you
8 feel that way?

9 MR. SEIVER: Yes, and that is about as
10 leading as you can get. "Did you feel that, and then
11 explain it yes or no."

12 JUDGE SIPPEL: I'll sustain the objection
13 on that basis.

14 BY MR. CAMPBELL:

15 Q Mr. Dunn, do you have Gulf Power Exhibit
16 12 in front of you. Gulf Power's constructing
17 specification.

18 A Yes.

19 Q And you were asked a great deal of
20 questions about this in the cross-examination;
21 correct?

22 A Yes.

1 Q You have personal knowledge of those spec
2 plates; don't you?

3 A Yes.

4 Q In fact if we look at the bottom of many
5 of the spec plates that are marked as Exhibit 12, your
6 initials, or your signature, appear on them; correct?

7 A This has my name spelled out; others I've
8 signed.

9 Q What are the dates of those spec plates
10 that appear as Gulf Power Exhibit 12?

11 A The first one was originated in '92, but
12 it was revised three times, and ended in '95.

13 The second one ended in '96 with a
14 revision, '96 - several of them were '96. In fact for
15 this set of plates, they were '92 to '96.

16 Q What year did Cox, just as an example,
17 enter into a contract with Gulf Power that was
18 terminated in the year 2000?

19 A '97.

20 Q Were these specifications incorporated
21 into that 1997 contract, specifications marked as Gulf
22 Power Exhibit 12?

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1 A Yes.

2 Q At the time they were incorporated into
3 that contract, how old were they relative to the last
4 revision for example?

5 A Approximately a year.

6 MR. SEIVER: Objection, Your Honor.

7 First of all, there's more than one plate;
8 they have more than one date; they have original
9 dates, revision dates, I'm not sure where this is
10 going, and it seems like it's going the same way
11 that's not even relevant.

12 MR. CAMPBELL: I don't even know how to
13 respond to that. He spent about an hour and a half in
14 his cross-examination talking about the specification
15 plates and relating them to the Southern Company
16 plates.

17 I am going to show that there is a
18 significant date difference between the two documents;
19 that renders his line of cross-examination irrelevant.

20 That's the point, Your Honor.

21 JUDGE SIPPEL: Well, if you can recall the
22 dates. Do you recall these dates he's referring to?

1 THE WITNESS: Yes, sir, they're shown on
2 the plates; the revision dates are shown.

3 MR. SEIVER: Maybe he'd be willing to
4 strike this exhibit then if it's irrelevant.

5 JUDGE SIPPEL: Mr. Seiver, the fact that
6 he's arguing relevancy doesn't mean that I have to
7 strike it. Okay? I just want to listen to what he
8 has to say.

9 MR. CAMPBELL: I think I was talking about
10 the cross-examination; not the exhibit.

11 But I'll try to make this easier.

12 BY MR. CAMPBELL:

13 Q Let's look at spec plate C-1. Katy, can
14 you work the highlighter for us? I think this will
15 make this easy.

16 Come to the bottom of spec plate C-1,
17 which is also plate one of Gulf Power Exhibit 12.

18 What was the date that was last revised?

19 A 8/28/95.

20 Q That's this date that appears right here?

21 A Yes.

22 Q And Cox's contract was entered into in

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1 what year?

2 A '97.

3 Q Okay, can you go to the next page, Katy.

4 JUDGE SIPPEL: '95 and '97.

5 THE WITNESS: That was - am I supposed to
6 be answering?

7 JUDGE SIPPEL: I've got dates here, but I
8 don't find the '97 date.

9 THE WITNESS: That was the date of the
10 contracts that these plates were attached to.

11 JUDGE SIPPEL: All right, go ahead.

12 MR. CAMPBELL: For the record, I believe
13 that contract appears as Gulf Power Exhibit 7, 1997.

14 MR. SEIVER: Your Honor, if it will speed
15 things up we will stipulate that contract #7 does have
16 those plates in them. It looks like, I mean if there
17 is a difference in those plates, we'll listen to them.
18 But they've got plates.

19 JUDGE SIPPEL: Let Mr. Campbell finish.
20 We're just talking about dates. That's all we're
21 talking about.

22 BY MR. CAMPBELL:

1 Q Can you go to page two, Katy? We're still
2 on Gulf Power Exhibit 12, page two. What date was
3 this spec plate last revised?

4 A 3/18/96.

5 Q One year prior to the Cox contract?

6 A Yes.

7 Q Would you go to the next page, please
8 Katy? When was this spec plate last revised?

9 A 3/18/96.

10 Q The year before the Cox contract?

11 A Yes.

12 Q Spec plate C-4, the following page, still
13 in Gulf Power Exhibit 12, when was this spec plate
14 last revised?

15 A 3/18/96.

16 Q A year before the Cox contract; correct?

17 A Yes.

18 Q Would you go to the next page? Spec plate
19 C-5, when was it last revised?

20 A 3/18/96.

21 Q A year before the Cox contract; correct?

22 A Yes.

1 Q Next plate. When was it last revised?

2 A 6/17/92.

3 Q There's a little more space there, five
4 years prior to the Cox contract?

5 A Yes.

6 Q Next plate, C-7. Is there anything
7 indicating when that was last revised?

8 A It was not revised. It has an original
9 date of 6/3/92.

10 Q Go to spec plate C-8, please. When was
11 that last revised?

12 A 3/18/96.

13 Q What about spec plate C-9?

14 A 3/18/96.

15 Q What about spec plate C-10?

16 A 3/18/95.

17 Q And what about spec plate C-11?

18 A It was the original plate, 4/05/93.

19 Q Could you turn to Exhibit 11.

20 What is that document?

21 A It's the overhead distribution Southern
22 Company standards, what we call a spec book.

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1 Q At some point in time did Gulf Power adopt
2 the Southern Company's specifications?

3 A Yes, we did.

4 Q When did that happen?

5 A Approximately the year 2000.

6 Q Three years after the Cox contract?

7 A Yes.

8 MR. SEIVER: Objection.

9 JUDGE SIPPEL: You're going a little bit
10 deeper than even cross examine went on this. We
11 didn't get into this on cross-examination, did we?

12 MR. CAMPBELL: He did it in a very glancing
13 way and a very general way, and these specifics are
14 necessary to show that that is misleading.

15 This is the whole idea of redirect.

16 MR. SEIVER: I don't know how anybody was
17 misled.

18 JUDGE SIPPEL: I'm going to sustain the
19 objection. I just don't find this to be relevant to
20 his cross-examination.

21 MR. CAMPBELL: I believe it's very
22 relevant, Your Honor. But to expedite things, I will

1 try it through summary format, if it's getting too
2 deep into the weeds.

3 BY MR. CAMPBELL:

4 Q Mr. Dunn, did you undertake an analysis of
5 Exhibit 11, Gulf Power specifications plates, and
6 Exhibit 12, the Southern Company manual; do you know
7 how those spec plates made their way into the Southern
8 Company manual?

9 MR. SEIVER: Objection.

10 JUDGE SIPPEL: Sustained. We're not going
11 into it.

12 MR. CAMPBELL: Your Honor, let me make a
13 proffer on this point.

14 The witness was asked on cross examination
15 about these spec plates in detail. The witness was
16 asked about certain specifications either relating to
17 the NESC or not relating to the NESC. He was asked
18 about Southern Company specifications.

19 The inference made in the questioning,
20 indeed supported by the testimony of Mr. Harrelson
21 that we'll hear later, is that the Gulf Power spec
22 plates are outdated, are not reasonable, are

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1 arbitrary, and shouldn't be considered in this
2 proceeding.

3 It is directly relevant to redirect on
4 those same points he raised in cross-examination to
5 show that they in fact made their way into the
6 Southern Company's spec book some several years later,
7 and that they are indeed reasonable and consistent or
8 exceed the Southern Company specifications. It's
9 directly relevant.

10 MR. SEIVER: If there was another
11 proceeding going on. I sure didn't say anything about
12 anything being misleading to this witness. I'm not
13 sure what he's talking about.

14 I mean I did ask him about these in detail
15 on the items, if he wants to go into the plates, I'm
16 not going to object to that.

17 JUDGE SIPPEL: I'm not going to permit this
18 line of questioning. That's my ruling.

19 BY MR. CAMPBELL:

20 Q Do you recall a line of questioning, Mr.
21 Dunn, about whether or not Gulf Power specifications
22 were enforced in the field?

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1 A Yes.

2 Q Does the Florida Public Service Commission
3 have audits of Gulf Power's DSOs?

4 A Yes.

5 Q Tell me about that process.

6 A Generally each quarter of each year a
7 listing of all new construction will be provided to
8 the Florida Public Service Commission, and they will
9 randomly select orders worked to come into the field
10 to inspect. And they inspect for violations of the
11 National Electric Safety Code, because they adopt the
12 safety code as a standard.

13 And they will send an inspector out, and
14 he will go out with a Gulf employee; and they will
15 look at and evaluate all of that construction.

16 And then if there are any violations to
17 the National Electric Safety Code, they will ask for
18 those to be corrected. And those violations can be
19 Gulf Power violations, or they can be anyone attaching
20 to a Gulf Power pole.

21 Q Would that include cable television
22 companies attaching to Gulf Power's poles?

1 A Yes.

2 Q Would that include CLECs attaching to Gulf
3 Power's poles?

4 A Yes.

5 Q Would it include ILECs?

6 A Yes.

7 Q From time to time, in your experience, did
8 these audits pick up on spacing violations between
9 communications attachments on Gulf Power's poles?

10 MR. SEIVER: Your Honor, objection,
11 mishandles his testimony. I mean this is - we didn't
12 even get to the fact that inspections now - the
13 conclusions of these inspections, I'm not sure if that
14 has to do with whether Gulf enforced it in the field.

15 JUDGE SIPPEL: Well, I agree with you, yes
16 and no. He did testify as to issues that would come
17 up in the field. This is a little bit new going into
18 violations and enforcement issues.

19 I don't recall that coming up on cross-
20 examination.

21 MR. CAMPBELL: It did, Your Honor, and to
22 have the leading questions -

1 JUDGE SIPPEL: All right, before we get to
2 the leading, let me get to the substantive matter.

3 MR. CAMPBELL: Your Honor, his question
4 was, are these specifications enforced in the field.

5 JUDGE SIPPEL: That's correct.

6 MR. CAMPBELL: That's a very general
7 question. And I am going to establish that through
8 this audit process, that's at least one way they are
9 enforced in the field, it's an exact response.

10 JUDGE SIPPEL: But nobody's denying the
11 fact that they are enforced. That hasn't become an
12 issue of contention.

13 MR. CAMPBELL: That was the point of his
14 cross-examination questions.

15 JUDGE SIPPEL: Well, the witness seemed to
16 answer the question pretty straightforward; was not
17 shown to be a liar or a phony.

18 MR. CAMPBELL: If Your Honor will stipulate
19 that these are enforced in the field, I will move away
20 from my line of questioning.

21 MR. SEIVER: The transcript will bear it
22 out, I think the witness was asked. He said they

1 should be, and defined instances where violations
2 exist, and that was it. I'm not sure how that spawns
3 the rest of his questions. It seems to me as Your
4 Honor recalled it a pretty direct answer.

5 JUDGE SIPPEL: Well, he's willing to move
6 off of this if you will specify to a pattern or a
7 policy of compliance with the field requirements.

8 Is that unreasonable?

9 MR. SEIVER: Well, it's not what the
10 witness testified.

11 JUDGE SIPPEL: All right, ask the question.

12 BY MR. CAMPBELL:

13 Q Thank you. Let me see if I can remember
14 what the question was.

15 From time to time, through this audit
16 process that you described, have violations relating
17 to separations between communications cables on Gulf
18 Power's facilities been identified?

19 A Yes.

20 MR. SEIVER: That's a leading question.

21 MR. CAMPBELL: I don't think that is
22 suggestive of the answer, Your Honor.

1 JUDGE SIPPEL: It does not suggest an
2 answer. It does not suggest an answer. I'm going to
3 permit the question, but I want to caution counsel, be
4 careful how you frame these questions.

5 MR. CAMPBELL: Yes, sir.

6 THE WITNESS: Yes, there were violations
7 cited for cable, for spacing, and for ILECs as well as
8 Gulf Power Company.

9 BY MR. CAMPBELL:

10 Q What did Gulf Power do about those
11 violations?

12 A We fixed the violations. We notified the
13 appropriate cable company that they had to correct
14 their violations, and then we reported that the
15 corrections had been made to the Florida Public
16 Service Commission.

17 Q Thank you, Mr. Dunn.

18 Could you turn to Exhibit 4. I believe it
19 should be the cable television printing process.

20 For a time period you were the manager
21 over the implementation of this process; correct?

22 A That's correct.

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1 Q Is there anything in Exhibit 4, cable TV
2 permitting procedure, that requires Gulf Power to
3 allow make-ready to be performed?

4 MR. SEIVER: Objection as to the form.
5 That requires them to allow make-ready to be
6 performed.

7 JUDGE SIPPEL: Well, he wasn't leading the
8 witness.

9 MR. SEIVER: No, but he was asking him for
10 him to come to a legal conclusion, about it requires
11 them to do something.

12 MR. CAMPBELL: I don't think I'm asking for
13 a legal conclusion at all.

14 JUDGE SIPPEL: Well, this witness is not an
15 expert. He's a businessman. He knows technical
16 information that he's trying to transmit to us.

17 I just don't see how it's being misled to
18 - that is really cutting the cheese too thin. But I
19 am again going to caution, I am not going to be
20 spending a lot of time trying to cut testimony out
21 because of this distinction between law and fact. So
22 let's get on with it.

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